



Schwegman ■ Lundberg ■ Woessner ■ Kluth

United States Patent Application COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: <u>MEDICAL DEVICE HAVING RHEOMETRIC MATERIALS</u>
AND METHOD THEREFOR.

The specification of which was filed on October 2, 2001 as application serial no. 09/970,146.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. §1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. §119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

No such claim for priority is being made at this time.

Attorney Docket No.: 279.262US1 Serial No. 09/970,146 Filing Date: October 2, 2001

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael	Reg. No. 24,916	Haack, John L.	Reg. No. 36,154	Nelson, Albin J.	Reg. No. 28,650
Aronoff, Marvin S.	Reg. No. 35,052	Harris, Robert J.	Reg. No. 37,346	Nicholson, Lea A.	Reg. No. 48,346
Arora, Suneel	Reg. No. 42,267	Jackson Huebsch, Katharine A.	Reg. No. 47,670	Nielsen, Walter W.	Reg. No. 25,539
Beekman, Marvin L.	Reg. No. 38,377	Jurkovich, Patti J.	Reg. No. 44,813	Padys, Danny J.	Reg. No. 35,635
Bianchi, Timothy E.	Reg. No. 39,610	Kalis, Janal M.	Reg. No. 37,650	Parker, J. Kevin	Reg. No. 33,024
Billion, Richard E.	Reg. No. 32,836	Klima-Silberg, Catherine I.	Reg. No. 40,052	Perdok, Monique M.	Reg. No. 42,989
Black, David W.	Reg. No. 42,331	Kluth, Daniel J.	Reg. No. 32,146	Peret, Andrew R.	Reg. No. 41,246
Brennan, Thomas F.	Reg. No. 35,075	Lacy, Rodney L.	Reg. No. 41,136	Peterson, David C.	Reg. No. 47,857
Brooks, Edward J., III Chadwick, Robin A.	Reg. No. 40,925 Reg. No. 36,477	Lemaire, Charles A. LeMoine, Dana B. Lundberg, Steven W.	Reg. No. 36,198 Reg. No. 40,062 Reg. No. 30,568	Phillips, Bryan K. Prout, William F. Schumm, Sherry W.	Reg. No. 46,990 Reg. No. 33,995 Reg. No. 39,422
Clapp, Richard R. Clark, Barbara J. Clise, Timothy B.	Reg. No. 31,751 Reg. No. 38,107 Reg. No. 40,957	Maki, Peter C. Malen, Peter L.	Reg. No. 42,832 Reg. No. 44,894	Schwegman, Micheal L. Scott, John C.	Reg. No. 25,816 Reg. No. 38,613 Reg. No. 45,368
Cochran, David R. Dahl, John M. Drake, Eduardo E.	Reg. No. 46,632 Reg. No. 44,639 Reg. No. 40,594	Mates, Robert E. McCrackin, Ann M. McTavish, Hugh E.	Reg. No. 35,271 Reg. No. 42,858 Reg. No. 48,341	Smith, Michael G. Speier, Gary J. Steffey, Charles E.	Reg. No. 45,458 Reg. No. 25,179
Embretson, Janet E.	Reg. No. 39,665	Mehrle, Joseph P.	Reg. No. 45,535	Stordal, Leif T. Terry, Kathleen R. Tong, Viet V.	Reg. No. 46,251
Forrest, Bradley A.	Reg. No. 30,837	Moore, Charles L., Jr.	Reg. No. 33,742		Reg. No. 31,884
Gamon, Owen J.	Reg. No. 36,143	Muller, Mark V.	Reg. No. 37,509		Reg. No. 45,416
Gorrie, Gregory J. Gortych, Joseph E. Greaves, John N.	Reg. No. 36,530 Reg. No. 41,791 Reg. No. 40,362	Nama, Kash Nasiedlak, Tyler L	Reg. No. 44,255 Reg. No. 40,099	Viksnins, Ann S. Woessner, Warren D.	Reg. No. 37,748 Reg. No. 30,440

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:
P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)373-6900

Full Name of joint inventor Citizenship:	United States of America	Residence: Roseville, MN
Post Office Address: Signature:	1080 Lovell Avenue Roseville, MN 55113	Date: 2/4/02
	Eric G. Lovett	
 Full Name of joint inventor	number 2 : Robert J. Sweeney United States of America	Residence: Woodbury, MN
Citizenship: Post Office Address:	7853 Cobblestone Road Woodbury, MN 55125	

Attorney Docket No.: 279.262US1 Serial No. 09/970,146 Filing Date: October 2, 2001

Full Name of joint inven Citizenship: Post Office Address:	United States of America 1087 Camino Ricardo San Jose, CA 95125	Residence: San Jose, CA	
Signature:	David T. Jacobsen	Date:	
Full Name of joint inven Citizenship: Post Office Address:	tor number 4: Gildo L. Epis, Jr. United States of America 1050 Benton Street #1207 Santa Clara, CA 95050	Residence: Santa Clara, CA	
Signature:	Gildo L. Epis, Jr.	Date:	
Full Name of inventor: Citizenship: Post Office Address:		Residence:	
Signature:		Date:	
Full Name of inventor: Citizenship: Post Office Address:		Residence:	
Signature:		Date:	
			_

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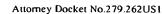
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§ 1.56 Duty to disclose information material to patentability.

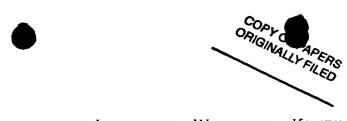
- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application:
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.







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Attorney Docket No.: 279.262US1

Serial No. 09/970,146 Filing Date: October 2, 2001

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P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)373-6900

statements may jeopardiz	e the validity of the application or any pater	nt issued thereon.	
Full Name of joint invent	or number 1: Eric G. Lovett		
Citizenship:	United States of America	Residence: Roseville, MN	
Post Office Address:	1080 Lovell Avenue		
	Roseville, MN 55113		
Signature:		Date:	
	Eric G. Lovett		
Full Name of joint invent		Davidson Washing MN	
Citizenship:	United States of America	Residence: Woodbury, MN	
Post Office Address:	7853 Cobblestone Road		
	Woodbury, MN 55125		
Signature:		Date:	
•	Robert J. Sweeney		

Attorney Docket No.: 279.262US1

Serial No. 09/970,146 Filing Date: October 2, 2001

Full Name of joint inven	tor number 3: David T. Jacobson		
Citizenship:	United States of America	Residence: San Jose, CA	
Post Office Address:	1087 Camino Ricardo		
6) San Jo ff CA 95125	. 1 . 1	
\mathcal{K}	mark Thomas	2/8/02	
Signature:	av 40 Jacovio	Date:	
	David T. Jacobsen		
Full Name of joint inven	tor number 4: Gildo L. Epis, Jr.		
Citizenship:	United States of America	Residence: Santa Clara, CA	
Post Office Address:	1050 Benton Street #1207	· · · · · · · · · · · · · · · · · · ·	
	Santa Clara, CA 95050		
	,		
Signature:		Date:	
	Gildo L. Epis, Jr.		
Full Name of inventor:			
Citizenship:		Residence:	
Post Office Address:		Residence.	
1 ost Office Address.			
Signature:		Date:	
D 1137 - C' -			
Full Name of inventor:		Residence:	
Citizenship: Post Office Address:		Residence:	
Post Office Address:			
Signature:		Date:	
-			

Attorney Docket No.: 279.262US1

Serial No. 09/970,146 Filing Date: October 2, 2001

§ 1.56 Duty to disclose information material to patentability.

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COPY OF PAPERS RIGINALLY FILED



Schwegman ■ Lundberg ■ Woessner ■ Kluth

United States Patent Application COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: MEDICAL DEVICE HAVING RHEOMETRIC MATERIALS AND METHOD THEREFOR.

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Billion, Richard E.	Reg. No. 32,836	Klima-Silberg, Catherine I.	Reg. No. 40,052	Perdok, Monique M.	Reg. No. 42,989
Black, David W.	Reg. No. 42,331	Kluth, Daniel J.	Reg. No. 32,146	Peret, Andrew R.	Reg. No. 41,246
Brennan, Thomas F.	Reg. No. 35,075	Lacy, Rodney L.	Reg. No. 41,136	Peterson, David C.	Reg. No. 47,857
Brooks, Edward J., III	Reg. No. 40,925	Lemaire, Charles A.	Reg. No. 36,198	Phillips, Bryan K.	Reg. No. 46,990
Chadwick, Robin A.	Reg. No. 36,477	LeMoine, Dana B.	Reg. No. 40,062	Prout, William F.	Reg. No. 33,995
Clapp, Richard R.	Reg. No. 31,751	Lundberg, Steven W.	Reg. No. 30,568	Schumm, Sherry W.	Reg. No. 39,422
Clark, Barbara J.	Reg. No. 38,107	Maki, Peter C.	Reg. No. 42,832	Schwegman, Micheal L.	Reg. No. 25,816
Clise, Timothy B.	Reg. No. 40,957	Malen, Peter L.	Reg. No. 44,894	Scott, John C.	Reg. No. 38,613
Cochran, David R.	Reg. No. 46,632	Mates, Robert E.	Reg. No. 35,271	Smith, Michael G.	Reg. No. 45,368
Dahl, John M.	Reg. No. 44,639	McCrackin, Ann M.	Reg. No. 42,858	Speier, Gary J.	Reg. No. 45,458
Drake, Eduardo E	Reg. No. 40,594	McTavish, Hugh E.	Reg. No. 48,341	Steffey, Charles E.	Reg. No. 25,179
Embretson, Janet E.	Reg. No. 39,665	Mehrle, Joseph P.	Reg. No. 45,535	Stordal, Leif T.	Reg. No. 46,251
Forrest, Bradley A.	Reg. No. 30,837	Moore, Charles L., Jr.	Reg. No. 33,742	Terry, Kathleen R.	Reg. No. 31,884
Gamon, Owen J.	Reg. No. 36,143	Muller, Mark V.	Reg. No. 37,509	Tong, Viet V.	Reg. No. 45,416
Gorrie, Gregory J.	Reg. No. 36,530	Nama, Kash	Reg. No. 44,255	Viksnins, Ann S.	Reg. No. 37,748
Gortych, Joseph E.	Reg. No. 41,791	Nasiedlak, Tyler L.	Reg. No. 40,099	Woessner, Warren D.	Reg. No. 30,440
Greaves, John N.	Reg. No. 40,362		-		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:
P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

statements may jeopardize th	ne validity of the application or any paten	t issued thereon.	,
Full Name of joint inventor of Citizenship: Post Office Address:	number 1: Eric G. Lovett United States of America 1080 Lovell Avenue Roseville, MN 55113	Residence: Roseville, MN	
Signature:	Eric G. Lovett	Date:	
Full Name of joint inventor of Citizenship: Post Office Address:	number 2: Robert J. Sweeney United States of America 7853 Cobblestone Road Woodbury, MN 55125	Residence: Woodbury, MN	
Signature:	Robert J. Sweeney	Date:	

X Additional inventors are being named on separately numbered sheets, attached hereto.

Attorney Docket No.: 279.262US1
Serial No. 09/970.146
Filing Date: October 2, 2001

Full Name of joint inventor number 3:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

David T. Jacobsen

Citizenship: Post Office Address:	United States of America 1087 Camino Ricardo San Jose, CA 95125	Residence: San Jose, CA	
Signature:	David T. Jacobsen	Date:	
Full Name of joint inver Citizenship: Post Office Address:	United States of America 1050 Benton Street #1207 Santa Clara, CA 95050	Residence: Santa Clara, CA	
Signature:	Gildo L. Epis, Jr.	Date: <u>18 Feb 02</u>	
Full Name of inventor: Citizenship: Post Office Address:		Residence:	
Signature:		Date:	
Full Name of inventor: Citizenship: Post Office Address:		Residence:	
Signature:		Date:	

Attorney Docket No.: 279.262US1 Serial No. 09/970,146

Filing Date: October.2, 2001

§ 1.56 Duty to disclose information material to patentability.

- examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application:
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.